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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 ERIK HUNG LE,

11 Petitioner,

12 v.

13 M.E. SPEARMAN, Warden,

14 Respondent.

CASE NO. 16-cv-2302 WQH-RNB

ORDER

15 HAYES, Judge:

16 The matter before the Court is the review of the Report and Recommendation
17 issued by United States Magistrate Judge (ECF No. 11) recommending that the Petition
18 for Writ of Habeas Corpus (ECF No. 1) be denied.

19 The duties of the district court in connection with a report and recommendation
20 of a magistrate judge are set forth in Federal Rule of Civil Procedure 72(b) and 28
21 U.S.C. § 636(b). The district judge must “make a de novo determination of those
22 portions of the report . . . to which objection is made,” and “may accept, reject, or
23 modify, in whole or in part, the findings or recommendations made by the magistrate.”
24 28 U.S.C. § 636(b). The district court need not review de novo those portions of a
25 Report and Recommendation to which neither party objects. *See Wang v. Masaitis*, 416
26 F.3d 992, 1000 n.13 (9th Cir. 2005); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121
27 (9th Cir. 2003) (en banc) (“Neither the Constitution nor the [Federal Magistrates Act]
28 requires a district judge to review, de novo, findings and recommendations that the

1 parties themselves accept as correct.”).

2 On July 23, 2018, Petitioner moved the Court for an extension of time to file
3 objections. The Court granted the extension and ordered that any objections shall be
4 filed on or before August 20, 2018. (ECF No. 17). No party has filed an objection to
5 the Report and Recommendation. The Court has reviewed the Report and
6 Recommendation, the record, and the submissions of the parties. For the reasons stated
7 in the Report and Recommendation, the Court concludes that habeas relief is not
8 warranted on Grounds 1-4 of the Writ of Habeas Corpus.

9 A certificate of appealability must be obtained by a petitioner in order to pursue
10 an appeal from a final order in a section 2254 habeas corpus proceeding. 28 U.S.C. §
11 2253(c)(1)(A); Fed. R. App. P. 22(b). Pursuant to Rule 11 of the Federal Rules
12 Governing Section 2254 Cases, “[t]he district court must issue or deny a certificate of
13 appealability when it enters a final order adverse to the applicant.”

14 A certificate of appealability should be issued only where the petition presents
15 “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).
16 “[T]he district court shall indicate which specific issue or issues satisfy the standard for
17 issuing a certificate, or state its reasons why a certificate should not be granted.” *United*
18 *States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir. 1997). A certificate should issue where
19 the prisoner shows that jurists of reason would find it debatable whether the petition
20 states a valid claim of the denial of a constitutional right, and whether the district court
21 was correct in its procedural ruling. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

22 Upon review of the record in this case, the Court concludes that Petitioner’s
23 claims in his Petition are non-frivolous and debatable among reasonable jurists. The
24 Court grants a certificate of appealability as to the following claims: Ground 1, Ground
25 2, Ground 3 and Ground 4.

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28 IT IS HEREBY ORDERED that the Report and Recommendation (ECF No. 11)

1 is adopted in its entirety.

2 IT IS FURTHER ORDERED that Petition for Writ of Habeas Corpus (ECF
3 No. 1) is denied. The Clerk is ordered to enter judgment in favor of Respondent and
4 against Petitioner and to close the case. The Court grants a certificate of appealability
5 as to the following claims: Ground 1,Ground 2, Ground 3 and Ground 4.

6 DATED: September 24, 2018

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8 **WILLIAM Q. HAYES**
9 United States District Judge